In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1032

HAMILTON NATIONAL BANK OF KNOXVILLE, EXECUTOR OF THE ESTATE OF JOHN EDD BRADLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case presents the question whether, under Tennessee law, a widow's interest in a statutory year's support constitutes a "terminable interest" within the purview of Section 2056(b)(1) of the 1954 Internal Revenue Code, so that her deceased husband's estate is not entitled to an estate tax marital deduction for an amount paid as support. Applying the rule established by this Court in *Jackson* v. *United States,* 376 U.S. 503, the court below properly held that under Tennessee law a widow's support interest is a non-deductible "terminable interest."

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In the *Jackson* case this Court held that whether a widow's allowance constitutes a "terminable interest" under the predecessor of § 2056(b)(1) must be determined as of "the date of death of the testator" (p. 508). In the instant case, as in *Jackson,* it was impossible to predict at the time of decedent's death whether his widow would eventually receive any support payments. In order for a widow to receive a year's support under Tennessee law she must file a formal dissent from her deceased husband's will and apply to the county court for widow's support; the court then appoints three freeholders to set aside personal property of the deceased husband and reviews their report.[1] As the lower court found, "if the widow dies before the year's support is set apart, the widow's estate does not have a right to the year's support" (Pet. 16).[2] Therefore, at the time of the decedent's death, his widow's claim for support was a conditional and terminable interest within the meaning of § 2056(b)(1).[3]

The principal question presented by the petition is one of Tennessee law, having no national importance. The decision below is correct; there is no conflict of decisions and no reason for this Court to review the

[1] See, *e.g.*, *International Baking Co.* v. *Polk*, 155 Tenn. 461, 465, 295 S.W. 472, 473; *Bayless* v. *Bayless*, 44 Tenn. 359, 363.

[2] See *Pope* v. *Alexander*, 194 Tenn. 146, 250 S.W. 2d 51.

[3] The estate is not entitled to a marital deduction merely because, more than a year after decedent's death, his widow did in fact receive $8,400. As this Court recognized in *Jackson*, "there is no provision in the Code for deducting all terminable interests which become nonterminable" (p. 509).

decision. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1966.

U.S. GOVERNMENT PRINTING OFFICE:1966